



Summer 2011

Connections



Do you recognize this courthouse?
See bottom of page 4.

Measuring Success: An Approach for High-Performing Courts

By Chad C. Schmucker, State Court Administrator

It has been two months since I have been on the job as state court administrator. I still have not met everyone who works for the State Court Administrative Office (SCAO), and I know there are many judges and court employees across the state that I have not met either. I would like to share with you my philosophy and my role at SCAO.

Courts serve the public. Courts are also like any other organization – some decline, some stagnate, and some are constantly improving. If we want high-performing courts, we have to be constantly improving. When we stop improving, we will stagnate or decline. Michigan has many high-performing courts now, and I would like to see that number increase.



I am not a big sports fan and I generally avoid sports analogies, but sometimes they fit. Everyone who works in the courts – judges and court employees – is on the team. My job, as the coach, is to give everyone a chance to be on the first string. Most players in high school do not want to just make the team, they want to start – and perhaps be a star. Maybe we all cannot realistically be in the running for the Heisman trophy, but certainly everyone who wants to try should have a shot at being on the first string.

How do we get there in an era of declining funding? There are lots of ways, and much of the work has already been done. The National Center for State Courts has been working on trial court performance standards for years; for those interested, see the [CourTools Website](#). In Michigan, we have also been working on standards. Kent County Circuit Judge Paul Sullivan and Region II Administrator James Hughes have been leading the Trial Court Performance Standards Committee.

The issue of performance standards can be scary for some people; it sounds like getting a report card, which was a tension-filled experience for most of us. But performance standards and metrics are already accepted in the business world, and in much of government. For example, would you expect your local hospital to monitor hospital-acquired infections and urge their employees to engage in best practices such as hand washing? Of course you would. When I recently had a phone installed at my house, I was called within minutes of the serviceman leaving my house with a short customer satisfaction survey. Courts can also measure what they do. They can set goals and try to improve on them.

Some judges worry that performance standards are just about the speed in processing cases, but much more than speed is at stake. We often think about (continued on page 2)

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Sobriety Court: Another Approach to the Repeat Drunk Driving Offender

By The Honorable Louise Alderson, 54A District Court, Ingham County

The penalties for repeat drinking and driving offenders are clear: up to five years in prison and up to a \$5000 fine for a third offense, plus court costs, license sanctions, restitution, reimbursement police and prosecution costs, driver responsibility fees, and vehicle immobilization. But do these traditional penalties really deter repeat drunk drivers? Or is there a more effective way to deal with the problem?

The most recent studies and literature would indicate that there is a better way: the judicial therapeutic approach.

The 54A Sobriety Court was created to reduce the incidence of repeat drinking and driving offenses. Our mission: reduce recidivism among repeat drunk drivers using court and community resources. Our tools: intensive supervision, individualized treatment, personal accountability, and frequent judicial review. And our goals: improved public safety and substance-free, sober lives for the participants.

The sobriety court program focuses on non-violent offenders with three or more drunk-driving convictions. Participation is voluntary. The offender, under a delayed sentence, enters a guilty plea to the felony charge and is allowed to reduce that to the lesser misdemeanor offense of Operating While Intoxicated (OWI), second offense upon successful completion of the sobriety court program.

Upon entering the 24-month program, the offender is placed on an intensive probation track for at least nine months. Probation is currently structured in four phases:

Phase 1 – Focus on substance abuse counseling (eight weeks minimum)

Phase 2 – Focus on relapse prevention (eight weeks minimum)

Phase 3 – Sobriety Maintenance (eight weeks minimum)

Phase 4 – Transitional (twelve weeks minimum)

Each phase has a built-in incentive system. Participants receive credit for satisfying program requirements; these credits allow participants to advance to the next phase. Each phase requires interaction with the judge, beginning with bi-weekly review hearings. Upon successful completion of the program, graduates participate in a public commencement ceremony. A participant who violates the program's conditions is brought before the judge – immediately if the offender is incarcerated, or at a violation hearing at the next review date. Relapse issues are handled with intermediate reviews and sanctions. Participants are expelled from the program for a new drinking and driving offense, or for ongoing noncompliance with the program. These unsuccessful participants are sentenced based on the original felony charge.

All OWI, third offense files are reported by the clerk's staff to the probation department so they are aware of new cases pending. Participants must live in the greater Lansing area so that they can more easily travel to and from court, counseling, and testing. The program does not discriminate based on race, gender, or national origin, as long as participants meet the original eligibility requirements. Those with a history of violent offenses, drug delivery and sale, and a significant mental health diagnosis may be ineligible for the program.

Since the sobriety court's inception in October 2005, 78 individuals have been admitted and 33 have successfully completed the program; 27 are still participating. Members of the sobriety court team are encouraged with the success rate here in Lansing; word of the sobriety court's success is spreading throughout the community. (continued on page 3)

Measuring Success

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speed because it is the easiest metric to measure, as we have the data at our fingertips. It is much harder to determine if court users are treated courteously by the court staff and judge, but courteous treatment can be measured. We can measure jury utilization rates, collection rates, trial date certainty, and many other metrics that distinguish a high-performing court from a court that is not interested in how it is doing.

The next decade is going to be a time of great improvement and innovation. I am looking forward to working with all of you as we work toward making all of our courts high-performing courts. ■

Maybe There Was Something in the Water

By Steven D. Capps
Director, Trial Court Services

Concurrent Jurisdiction Planning and Consolidation in the Trial Courts

For years, Berrien Chief Circuit Judge Ronald J. Taylor had been troubled by the fact that district court judges and circuit court judges often duplicated their efforts in criminal matters. The judge – now retired – was frustrated by the resulting loss of valuable time. Then one morning, while taking a shower, then-Chief Judge Taylor had an idea: if he had the authority to cross-assign judges, he could streamline court processes enormously.

Meanwhile, 160 miles away in Mt. Pleasant, Isabella County Chief Circuit Judge Paul Chamberlain (now Chief Trial Court Judge) was also pondering how his court could become more efficient. Then one day in the shower . . .

From the moment each judge conceived of consolidating court functions, they were on a mission. That mission culminated in 1996 when Berrien and Isabella counties, along with Barry, Washtenaw, Lake, and Crawford/Kalkaska/Otsego counties, became demonstration projects. Each demonstration project court merged circuit, probate, and district courts into a fully consolidated trial court.

As a result of the demonstration projects' success, the Legislature passed Public Act 678 of 2002 (MCL 600.401 *et seq.*). The act, effective April 1, 2003, allows trial courts to adopt a concurrent jurisdiction plan within a county or judicial circuit. Judges elected to a court within the county or circuit may exercise the jurisdiction of a judge in a different court, subject to the Michigan Supreme Court's approval. Michigan Supreme Court Administrative Order 2003-1 authorizes courts to develop plans for concurrent jurisdiction. The plans may combine operations of any two or more courts within the county or circuit.

How it Works

In a consolidated trial court, the individual trial court's jurisdiction remains unchanged. However, the judges are cross-assigned to allow maximum flexibility in handling their caseloads.

In Berrien County, for example, the court started out assigning a judge district court jurisdiction over criminal cases to handle the initial arraignment and preliminary hearing, but also circuit court jurisdiction upon bindover to arraign the defendant and set future circuit court events. Through this cross-assignment, the court advanced the progress of criminal cases by as much as six weeks. Judge Taylor observes that today in Berrien County the distinctions between the levels of court have essentially been abolished. "What exists today is the Berrien County Trial Court, with its separate divisions. Thus, the former 'district judge,' if assigned to the criminal division, exercises all authority over a criminal case, from first appearance to trial and sentencing. In fact, we have some elected 'circuit judges' in the criminal division who we find doing preliminary exams through trial, just like all the other criminal division judges." In Berrien and Isabella counties, judges elected to any of the courts also step in and handle overflow hearings in civil and criminal cases. These hearings might otherwise have to be adjourned, or wait for the assigned judge to finish another matter that has taken more time than expected.

Although judges are elected to judgeships within a specific court, a judge's cross-assignment goes largely unnoticed outside the courthouse. "To the public, a judge is a judge is a judge," Judge Taylor observes. "Our approach was to find dead time and fix it to achieve an effective result in a reasonable time frame."

Isabella County has taken the cross-assignment concept a step further by doing away with references to separate courts. Instead, a person approaching the counter is greeted by signs directing the person to file based on the type of case, rather than sending the filer to the court with jurisdiction.

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Sobriety Court

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Those who continue to drink and drive will be held accountable. But, through sobriety court, offenders also have a chance to change their lives by learning new tools to cope with and overcome their addictions. This program is not the final answer to drunk driving, but we are finding great success with this model of judicial intervention.

For more information on the sobriety court, please visit our website at www.lansingcourt.com. More information is also available from the Michigan Association of Drug Court Professionals (www.madcp.org) and the National Association of Drug Court Professionals (www.nadcp.org). ■

Concurrent Jurisdiction

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Concurrent jurisdiction plans are not limited to cross-assigning judges; they also allow courts to consolidate duplicate functions within the courthouse. In fact, administrative consolidation may be the greatest benefit of concurrent jurisdiction. For example, rather than having three separate file rooms and three separate offices for filing papers, through consolidation some courts have now moved to a single file room and a single clerk's office. And Berrien County has taken consolidation one step further: juvenile and domestic referees have been cross-trained to hear cases for the entire family division.

The Benefits

In larger jurisdictions, concurrent jurisdiction plans have allowed courts to specialize in ways that might not otherwise be possible – for example, consolidating some circuit and probate functions to create a unified family division.

Smaller jurisdictions have used consolidation to address staffing issues. In Lake County, for instance, there was insufficient work to employ a full-time attorney magistrate in district court, or to employ referees in either the juvenile or domestic relations divisions. But after consolidation, Lake County's unified trial court was able to employ a full-time attorney to act both as attorney magistrate and family division referee. Some of the functions the magistrate/referee performs are eligible for federal funding, thereby reducing the costs to the funding unit to less than the equivalent of a full-time employee.

Judges say successful consolidation plans are the result of three factors:

- exercising judicial leadership and cooperation;
- involving and consulting with judicial staff; and
- involving external stakeholders.

Judges in successful unified courts point out that judicial leadership and cooperation is the most important factor. They stress that no plan can succeed unless the judges are on board and promoting the plan.

As for consulting and involving judicial staff, this should happen at the earliest possible time. In Berrien County, Judge Taylor credits the Judicial Council, which consists of the chief judges of each court and the court administrators, as being instrumental in obtaining judicial staff cooperation.

Finally, as Judge Taylor notes, external stakeholders are an important part of the process. "Lawyers like predictability. Consistency of the unified trial courts provides that," says Judge Taylor.

Budget Cuts

Michigan's trial courts have been hit with severe budget cuts, prompting courts to find cost-effective ways to keep providing necessary services. Concurrent jurisdiction plans have proven themselves an effective way of addressing the budgetary problem.

In Berrien County, for example, from 2004 to 2011 the court's authorized staff was reduced from 253.5 to 217, a loss of 36.5 full-time equivalent employees. Had the court not consolidated, it could not have absorbed those losses without a significant reduction in services.

"If you can consolidate operations and be more efficient, it makes sense that you will save money," explains Berrien County Trial Court Chief Judge Alfred M. Butzbaugh.

Moreover, in Isabella County, the court was able to save space by building a new courthouse to accommodate the consolidated court. The new courthouse was designed to not duplicate areas that previously would have required separate space such as administration, central filing, cashiering, and probation services. Less space meant less cost.

Overall, consolidation has been successful. In fact, in a recent report, the State Bar of Michigan's Judicial Crossroads Task Force recommended an expansion of concurrent jurisdiction plans.

Michigan Supreme Court Chief Justice Robert Young also strongly supports greater use of concurrent jurisdiction. In commenting on the Judicial Crossroads report, the chief justice said that "many of our courts could benefit from consolidating some functions with other courts in the same judicial circuit. The Supreme Court has long urged the right-sizing of our court system and appropriate court consolidation. As chief justice, I very much appreciate having the State Bar's support for these measures as I continue to advocate for them." ■

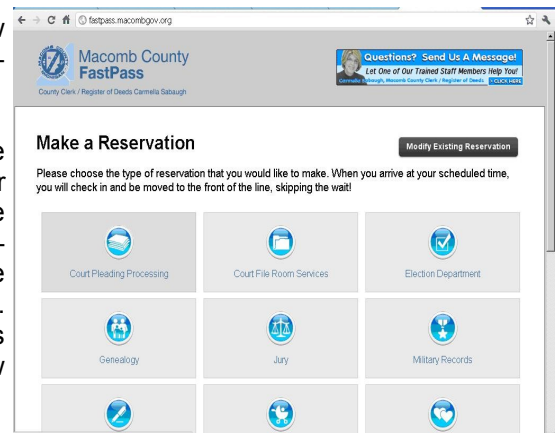
"FastPass" Lets Macomb County Circuit Court Filers Skip the Wait

By Todd Schmitz, Macomb County Chief Deputy Clerk
and Jennifer Phillips, Macomb County Circuit Court Administrator



Filing legal documents with the Macomb County Circuit Court is now faster and more convenient, thanks to "FastPass," a technological innovation that allows filers to make appointments online.

FastPass is similar to systems used by Disney World and the Apple Store. Here's how it works: On arriving at the clerk's office, a customer can use a cell phone with Internet access or a public computer in the lobby to check-in. FastPass automatically notifies clerk staff that the customer has arrived. When the next counter clerk becomes available, the customer is called up to the counter and conducts his or her business. Customers may also skip the wait to register a Macomb County business or get copies of vital records such as birth certificates, thanks to the new FastPass system.

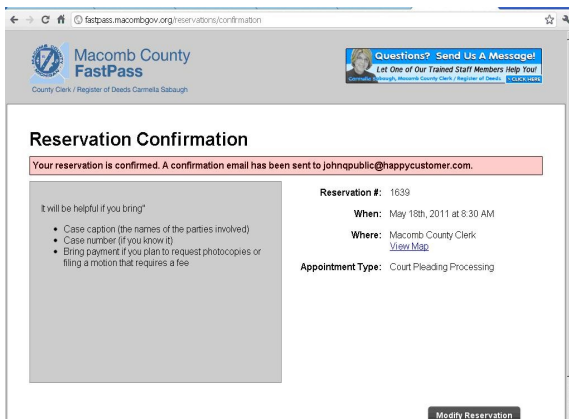


The screen shot (above right) shows what customers see at <http://fastpass.macombgov.org>.

After choosing the desired appointment type, the customer proceeds to the next screen (right) to select an available appointment time.



Subsequent screens ask the customer to supply contact information and then confirms the reservation (below). The system advises the customer about what to bring to the counter.



The FastPass system allows customers to avoid lines and also helps the court shift customer demand from peak times to non-peak times, shortening the lines for everyone, according to Chief Judge Mark Switalski and Clerk/Register of Deeds Carmella Sabaugh.

"We are focusing on the smart use of technology to improve service," Switalski explained. "The court offers more appointments during slower times of the day, allowing for more efficient service during peak times."

Sabaugh said the system has been up and running since February for vital records customers and it was an instant success.

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MSU Educates Students, Professionals in Court Administration

By Daniel Bauer, Management Analyst, Trial Court Services

Court administrators must master many different core competencies. A unique program at Michigan State University – the Judicial Administration Program – teaches working professionals the skills they need to succeed.

Participants can take core classes online in case flow management, human resources, and budget; the program also offers electives in court and community communication, and essential components of courts. The final requirement is a capstone course; participants write a final, 10-page paper on a topic of their choice. Each participant works under the guidance of an MSU faculty member.

The program is a joint effort by MSU and several professional organizations, including the Michigan Court Administrators Association, the Michigan Association of Circuit Court Administrators, the Southeast Michigan Court Administrators Association, and the National Association for Court Management. In fact, many of the program's requirements are offered at these organizations' annual conferences.

Jim Gibbs, court administrator for the 28th District Court in Southgate, was new to court administration when he began the program. He started taking classes because he wanted to learn more about court administration, and found the courses invaluable. Budget and finance were among the most important, along with other core competencies. "I use what I've learned for team building within my staff as well as interacting with other entities," he says. "I've learned how court actions will apply to others."

Jim was able to use those skills on his capstone project. He wrote on the feasibility of the court entering warrants directly into the Law Enforcement Information Network (commonly known by its acronym, LEIN) for the police department. He shared his project with his judge, and then successfully implemented his ideas. Both organizations now have a process that saves staff time and money.

Dearborn's 19th District Court Administrator, Gary Dodge, has been a legal/court administrator for more than 30 years. He cautions against experienced administrators dismissing the value of this program. "Experienced administrators may tell themselves, 'They're not going to teach me anything new,' but when you get into this, you can't help but learn something new. It gets you to rethink things that have been put in the depths of your mind."

The program provides learning opportunities for the core competencies of court administration; today, many courts prefer to hire applicants who demonstrate core competencies. With dedication and effort, professionals can complete the program in just a couple of months, though it's not uncommon to finish after a year or more.

Judicial Administration Program class credit can transfer to a graduate certificate or a master's degree in criminal justice with a specialization in judicial administration. See the [website](#) for more information. ■

FastPass

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"Staff and budget reductions provided us with an opportunity to offer services in a new way," said Sabaugh. "This service is another example of how technology can be used to improve service."

Sabaugh also relied upon a high-tech system to save the county \$26,000 when purchasing the FastPass system. After a public request-for-proposals process resulted in only two vendors, Sabaugh got approval to use Elance.com and obtained a much better outcome — an offer that represented nearly a 90 percent savings compared to the prior bids.

There is no hardware cost. The FastPass software runs in the free Google Chrome Web browser and the county hosts the site through Mediatemple.net at a cost of under \$20 per month. (For more about Google services for government, see the [Spring 2011 Connections](#).)

For more information about the court's experience with FastPass, contact Todd Schmitz at 586-469-5122 or Jennifer Phillips at 586-469-5166. ■

Street Outreach Court: Help for Homeless People; Benefits for Courts

By The Honorable Elizabeth Pollard Hines
15th District Court, Washtenaw County

Do you want to reduce recidivism, jail overcrowding, and help people experiencing homelessness get back on their feet and off the street? Washtenaw County's Street Outreach Court (SOC), which helps homeless individuals resolve civil infractions and non-violent misdemeanors, may be the answer.



Before I became involved with SOC, I assumed that the biggest barrier to getting off the streets was lack of food, clothing, or shelter. But in fact, misdemeanor bench warrants present a major barrier. In a late 1980s survey, homeless Vietnam veterans in San Diego identified misdemeanor bench warrants as the number one obstacle. Possessing Open Intoxicants in Public, Littering, and Urinating in Public are typical misdemeanors for homeless people. Unfortunately, the homeless often have difficulty making the required court appearance, for various reasons: the daily demands of survival, fear of being jailed, inability to pay the fine, substance abuse or mental health problems. Homeless people frequently find the court system to be complex and intimidating; for example, a homeless person may have all his possessions in a bag which he cannot take through courthouse security. But the homeless person's failure to appear in court usually results in an arrest warrant – which in turn becomes a barrier to benefits, housing, a job, or treatment.

SOC is a community project of the local criminal justice system and advocates for homeless people. SOC offers those who are homeless or at risk of homelessness the opportunity to resolve Washtenaw County civil infractions and non-violent misdemeanors, including warrants. Participants must demonstrate their commitment to working with service providers to address the behavior, such as substance abuse, that led to the charges.

Here's how SOC works: A homeless advocacy agency refers defendants to SOC. The Probation Supervisor of the 15th District Court, Ann Savickas, serves as the SOC Coordinator. The agency and the defendant create a customized SOC *Action Plan*, outlining steps to help the defendant become self-sufficient. The plans can include attending AA/NA, substance abuse and/or mental health treatment, job skills training, parenting classes, or anything else that will support the defendant and avoid further criminal charges or civil infractions. If the defendant complies with the plan, he or she is referred to the SOC Coordinator. I contact the district court judges to cancel any bench warrants as long as the defendant is complying with his or her *Action Plan*.

SOC is purely voluntary. If the prosecutor objects, the case will not be heard in SOC. If the defendant elects not to comply with the *Action Plan*, the case is removed and returned to traditional court. Any bench warrants that have been cancelled are then reinstated.

There are no surprises at the SOC hearing. The prosecutor, defense counsel, sponsoring agency, and I meet as a team the week before the actual court session to make sure the defendant is complying.

Court sessions are held offsite, not in the courthouse. Frequently, defendants have cases from multiple courts, miles apart. A Local Administrative Order allows me to hear cases from any of the district courts in Washtenaw County.

At the SOC hearing, defendants appear with counsel and the sponsoring agency. The service providers explain, on the record, the many positive steps the defendants have taken. With the permission of the prosecuting official, I am able to waive any court fines and costs due (money we could never collect), giving the defendant "credit" for treatment and successful completion of the *Action Plan*. Cases are closed or even dismissed, if the prosecutor agrees. Defendants have done much more than simply pay a fine, often completing months of treatment. They leave the courtroom with a clean slate. Significant barriers to obtaining housing, jobs, treatment and benefits have been removed. The criminal behavior has stopped. Instead of paying court fines, defendants can use their money to obtain and maintain housing, feed their families, and pay taxes. And the taxpayers benefit too: it is estimated that we have saved more than \$310,000 to date in incarceration costs.

Defense attorney Brant Funkhouser is a fan of the program. "I love SOC because it encourages people to engage in positive activities through service providers with tangible rewards, such as cancellation of warrants," (continued on page 8)

Street Outreach Court

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dismissal, or reduction of charges and credit toward obligations to the court. ...We see children being helped through the progress parents make.” Assistant Prosecuting Attorney Patricia Reiser also supports SOC, calling it “a win-win-win scenario because the offender wins, society wins, and the courts win.” Linda Bacigalupi from Project Outreach Team (PORT), a nationally recognized advocacy group, adds, “...the SOC has been a life saver.” SOC Coordinator Ann Savickas concludes that “The structure of SOC encourages participants to live in the solution, not the problem.”

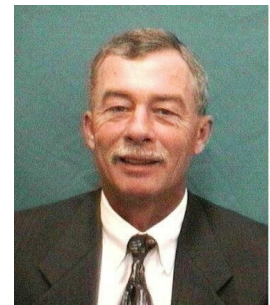
I would be happy to share our experience with any courts that are interested in setting up their own SOC program. One key is having the cooperation of everyone involved. We benefited, too, from long-distance advice from Steve Binder and Amy Horton-Newell, both with extensive experience with homeless courts.

SOC has been a success – for the taxpayers, for the courts, and most importantly, for the people SOC has helped escape life on the streets. ■

Coming Full Circle—Treasured Memories: 35 Years and Counting of Court Service

By Gary Secor

Court Administrator, 61st District Court, Grand Rapids



Who would have thought that the young guy in an ugly green leisure suit (the only suit I had – at least I wore a tie!) who nervously walked up the steps of the Ionia County Courthouse in September 1975 for a job interview would end up spending the next 35 years working in the courts? Certainly not me!

I had just graduated a few months earlier from MSU with a degree in social work. But I decided that I did not want to be a social worker – a decision I am glad I made to this day.

I got the job, and I have to say being a juvenile court probation officer was definitely a new experience – in fact, it was a rude awakening for someone who had been a platoon sergeant in the Army just a few years earlier. Unlike Army infantry soldiers, these kids didn't listen or show any respect. “What's wrong with them?” I wondered. “Oh right, that's why they're in juvenile court!”

Going on to become a court administrator and referee was a wonderful experience. Having great judges to work for like Judges Banks, McKaig, and Supina made life easier. I also had great colleagues and friends, like Bob Nida from Barry County who encouraged me to get involved with, and end up leading, state organizations like the Juvenile Court Administrators Association and Juvenile Justice Association. These organizations really expanded my knowledge of not only local, but also statewide matters. The toughest part of my time there was dealing with abuse and neglect cases; I can honestly say that after time, that experience wears on you.

After 10 years, I moved to Ionia to become friend of the court and circuit court referee for the 8th Circuit Court. The challenges seemed to increase; as I found out, you're only right 50 percent of the time no matter what you decide! But, as in juvenile court, I was blessed to have great staff – very dedicated, competent people who not only made my job that much easier, but made me look good. We soon became friends and not just co-workers. I was fortunate to have Judges Banks, Simon, and Nichols – tremendous people to work for.

In all those years in trial court administration, I did have an established career goal: to one day work for the State Court Administrative Office. That goal became a reality when I was hired as an analyst in the Friend of the Court Bureau in 1991.

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Coming Full Circle

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After being an administrator for 15 years, starting out as an SCAO analyst was another rude awakening. As I moved into a cubicle in the North Ottawa Building, I couldn't help but contrast my new digs with my spacious office and courtroom at the historic Ionia County Courthouse. My first thought was "What the heck did I just do!" But after having the opportunity to work with Dee Van Horn – a very talented supervisor and eventually a good friend – I soon realized I'd made the right choice

As it turned out, I wasn't an analyst for long. John Ferry, then Deputy State Court Administrator, assigned me to the Child Support Enforcement System project as Operations Manager where I was responsible for overseeing contracts, budgets, and 130-plus state and contractual staff. The project was extremely challenging but worthwhile – and I got a "real" office again! The six years I spent on the project were probably the most stressful of my career, but were also among the most rewarding. I learned a great deal about technology and management of large organizations and to this day I am still very proud of the entire staff and what we accomplished throughout the state of Michigan.

In 1997 I came back to the SCAO central office, but, as it turned out, not for long: John Ferry and then Chief Justice Mallet soon assigned me to work on the Detroit Records Court and Third Circuit Court merger. Talk about a challenge! For the next nine months, I worked four days a week in the SCAO Region I office. I had a nice office with a view of the river, but worked long days and spent significant time away from family and friends. Once again, however, a challenging task proved to be a great learning experience. It was through the Recorder's Court merger that I developed an approach I would use on court improvement projects with many courts throughout the state. I was still using this same approach when I retired from SCAO in April.

For the next 12 years, I was assigned to one statewide and internal SCAO project after another – I believe 68 in all. I had the opportunity to work with judges, administrators, and court staff all over the state of Michigan. I loved it and will have fond memories of all of them.

In addition, I was later assigned management responsibilities for SCAO's Drug Court grant programs. That may have been one of the most rewarding assignments of my career. After attending one drug court graduation, I was "hooked" and devoted the next five years to becoming the consummate advocate for specialty court programs statewide. My mission was to do as much as possible, and make it as easy as possible, for these courts to obtain the funding they so desperately needed to continue and expand these services. Having attended drug court sessions throughout Michigan, I have great appreciation and administration for the judges, caseworkers, treatment providers, and all those involved with these programs. They are helping people escape the cycle of dependency and crime.

Friends, co-workers, colleagues, judges – too many to name over these 35 years – have given me treasured memories. It has been an honor to know and work with them. I hope many of them feel the same about me. I hope I will also be remembered as professional, ethical, trustworthy – and, most of all, as a friend.

As I continue my court career in Grand Rapids at the 61st District Court, I hope if you get a chance, you'll stop in at the courthouse and say "hi!"

Seems I've come full circle: from probate court to circuit court to SCAO and finally, in district court, back to the trial courts again. I think I've covered all the bases. In some sports, that's called a homer – kind of the way I feel about these 35 years. ■

When Insults Had Class . . .

These glorious insults are from an era before the English language was boiled down to 4-letter words.

***I've had a perfectly wonderful evening.
But this wasn't it."***

~Groucho Marx

***"I feel so miserable without you;
it's almost like having you here."***

~Stephen Bishop

Confidentially Speaking

By Doug Van Epps

Director, Office of Dispute Resolution

Several decades ago, in the early days of mediation practice, it was common for mediators to tell parties that “everything you say here is confidential and can’t be used for any other purpose.” In 2000, with the adoption of MCR 2.411 and amendments to MCR 3.216, that basic premise still holds true—but the new provisions added several circumstances in which confidentiality may not be protected. These included the mediator’s report to the court about whether the matter settled, information for evaluating mediation services, and information regarding party attendance and fee disputes. But, except for these limited circumstances, mediators continued to advise that “everything else is confidential.”



That is about to change. Starting in September 2011, recent amendments adopted by the Supreme Court will expand exceptions to confidentiality.

Surveying nearly a decade of mediation practice in 2009, the SCAO-appointed Mediation Confidentiality and Standards of Conduct Committee determined that the current confidentiality provisions were overbroad, permitting mediation to be used inappropriately. Communications relating to criminal activity, child abuse and neglect, professional misconduct, and fraud, for example, could be protected and not subject to disclosure. One committee member cited a domestic relations case in which a party asserted during mediation that a business was valued at \$2 million; just weeks after the judgment based on the mediation was entered, the business was sold for \$6 million. When the opposing party tried to set aside the judgment based on fraud, the mediation statements regarding the \$2 million valuation were disallowed under the current rules.

In its 2010 Report to the Michigan Supreme Court, the committee recommended that the Court consolidate the several confidentiality rule provisions of MCR 2.411 and 3.216 into a new court rule—MCR 2.412—and expand the list of exceptions to closely resemble the exceptions appearing in the Uniform Mediation Act (UMA). While UMA has been adopted in 13 states, it has not been adopted in Michigan. Absent statutory guidance, the committee proposed the Court should revise the court rules patterned on UMA.

Following publication of the proposed rule and a public hearing, the Court adopted MCR 2.412 in April 2011, effective September 1, 2011. The new rule retains the original historical statement that mediation communications are confidential, and also preserves the original court rule exceptions. But the new rule adds more exceptions. Communications may not be protected when they are: (1) made during a mediation session required by law to be open to the public; (2) a threat to inflict bodily injury or to plan, commit, or conceal a crime; (3) pertaining to a claim of abuse or neglect of a child, a protected individual, or a vulnerable adult; (4) included in a report of professional misconduct or used to prove or disprove misconduct allegations in the attorney disciplinary process; (5) arising out of claim of malpractice; and (6) used to enforce or rescind a contract.

The contract exception applies where one party tries to either enforce or rescind a mediation agreement and the other party refuses to stipulate to disclosure of the mediation communications. Under the new rule, a party can request an in-camera hearing to demonstrate that the sought-after evidence is not otherwise available and that the need for the evidence substantially outweighs the interest in protecting confidentiality.

The rule affirms that mediators may report allegations of child and elder abuse and neglect without violating confidentiality, and clarifies that attorney mediators may also report professional misconduct.

Most mediators view these amendments, not as weakening the confidentiality rule, but as actually enhancing the integrity of mediation. The changes put parties on notice that the mediation process cannot be used to hide wrongdoing or to resolve litigation by fraud. See the [order](#) adopting MCR 2.412 and amendments to MCR 2.411 and MCR 3.216. ■

For additional information, contact Doug Van Epps, Director of the Office of Dispute Resolution, at 517-373-4840 or vanepspd@courts.mi.gov.

Media 101

The Genuine Article: Writing Like a Professional

By Marcia McBrien

Public Information Officer, Michigan Supreme Court



Nathaniel Hawthorne, the 19th-century American author, once said that “Easy reading is damned hard writing.” He might have added, “Especially when writing short articles for publication.” Whether you’re instructing your readers in the fine points of raising prize dahlias or promoting your court’s newest program, pay attention to these basic principles:

- (1) **It’s all about them.** Many people approach writing an article as if it were a vehicle for self-promotion. Done skillfully, it can be – but the audience comes first. Any added glow to your reputation is a mere byproduct. So keep your focus on your audience. Who are they? Why should they be interested in what you have to tell them? How can you present your topic most effectively? What does the audience need to know? What do they *not* need to know? Can photos or graphics help tell the story?
- (2) **What’s your lead?** The lead, or lede as it’s sometimes spelled, is usually the first line or paragraph in an article; a good lead quickly introduces the topic and interests readers enough to read further.

For an example of an effective lead, see Judge Elizabeth Pollard Hines’ article on page 7. Judge Hines opens with a rhetorical question and goals that will appeal to her chosen audience – what court wouldn’t want to reduce recidivism, etc.? – and then proposes Street Outreach Court as a vehicle to achieve those goals.
- (3) **You can’t be both the author and the source.** Yes, it’s nice to have a byline, and it’s also nice to be quoted. But when did you ever see a bylined article where the writer interviewed himself or herself? Quoting good sources – people with expertise or first-hand knowledge of your topic – lends authority to your article. You may be the best source on your topic. If so, have someone else interview you and write the article.
- (4) **Show, don’t tell.** This old adage, beloved of many generations of high school English teachers, is still true. Don’t waste the audience’s time telling them that your program is the most innovative, effective, and money-saving initiative on the planet. Instead, illustrate its successes – for example, with statistics, first-hand accounts, and studies. “In the first year alone, we saved \$X – three times as much as we invested in the program at the beginning.”
- (5) **Get to the point.** The inexperienced writer often engages in a lot of throat-clearing before introducing the actual topic—a common mistake referred to as “burying the lead.” So do not open your article with a sleep-inducing history of your organization or a lengthy discussion of the many committee meetings you held before finalizing your project. If you think the audience can benefit by reading about that process, introduce it later in the article – and keep it succinct. “The committee concluded that good communication was critical to the program’s success, so we set up an online information center.”
- (6) **Know your publication.** Whether you’re writing for *TCS Connections* or *The Wall Street Journal*, familiarize yourself with the publication’s standards and rules for submitting articles. Do not merely submit a press release which may have to be rewritten – or rejected. Also, do not recycle material that you have already submitted to the same publication. Take the time to craft a professional-quality article that will reflect well on you and your court.

Marcia McBrien is an attorney and the Public Information Officer of the Michigan Supreme Court. Media 101 is a regular feature of *TCS Connections*. If you have a media or public relations topic that you’d like to see in a future issue, e-mail Marcia at McBrienM@courts.mi.gov. You can also follow Marcia on Twitter at <http://twitter.com/CourtInfo>.

Just for Fun



The stories were written; the proofing was done
And then we realized — no article “for fun.”
No laugh, no chuckle, no giggle or snort.
No snicker, or cackle — not even something short.
To Google we went and what did we see?
Something unique — a case about a tree.

Fisher v Lowe

122 Mich App 418 (1983)

Before BRONSON, P.J. and V.J. BRENNAN and J.H. GILLIS, JJ.

J.H. GILLIS, Judge

We thought that we would never see
A suit to compensate a tree.
A suit whose claim in tort if prest
Upon a mangles tree’s behest;

A tree whose battered trunk was prest
Against a Chevy’s crumpled crest;
A tree that faces each new day
With bark and limb in disarray;
A tree that may forever bear
A lasting need for tender care.

Flora lovers though we three,
We must uphold the court’s decree.

Affirmed.
[footnote omitted]

Questions? Comments? Suggestions?

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Articles edited by Marcia McBrien.

Calendar of Events

June

- 26-29 MPJA Summer Conference
Crystal Mountain
29 LEP Steering Committee Meeting
Hall of Justice

July

- 1 MACM Meeting
Hall of Justice
12 MFSC Meeting
Lansing
14 CWS Webcast: Educational Screening
15 MDJA Meeting
State Bar, Lansing
15 CWS Adoption & Permanency Forum
Ramada Au Sable Valley Inn, Grayling
18-22 Learning Center Careers Program – Middle School
Hall of Justice
19 MJA Meeting
University Club, East Lansing
21 FOCA Meeting
Cheers, Mt. Pleasant
26 CWS Training: Handling the Child Welfare Case
Hall of Justice
27 LEP Steering Committee Meeting
Hall of Justice
29 MADCM Meeting
Christie's Bistro, Lexington Hotel, Lansing

August

- 5 Reg. 2 District Court Administrators
Grand Haven
9 MFSC Meeting
Lansing
11-12 MDJA Conference
Park Place Hotel, Traverse City
11 MJI Training: Advanced Customer Service
Hall of Justice
18 FOCA Meeting
Cheers, Mt. Pleasant
18 CWS Webcast: Advocating for Meaning Services in
Child Welfare
21-23 MJA Conference
Grand Hotel, Mackinac Island
26 CWS Adoption and Permanency Forum
Kewadin Casino, St. Ignace
28-31 MACC Summer Conference
Amway Grand Plaza Hotel, Grand Rapids
30- MJI Court Administrators Orientation Seminar
9/1 Hall of Justice
31 LEP Steering Committee Meeting
Hall of Justice

September

- 2 MACM Meeting
Hall of Justice
8 Technology Implementation Committee Meeting
Hall of Justice
9 Reg. 3 Juvenile Administrators & Registers Meeting
Mt. Pleasant
13 MFSC Meeting
Lansing
15 FOCA Meeting
Cheers, Mt. Pleasant
15 Reg. 2 District Judges Meeting
Kalamazoo
15 CWS Webcast: Fostering Connections—Extension
of Foster Care to Age 21
16 MDJA Meeting
State Bar, Lansing
16 Reg. 3 Probate Registers Meeting
Mt. Pleasant
20 MJA Meeting
University Club, East Lansing
21-23 MADCM Conference
Shanty Creek, Bellaire
23 CWS Adoption & Permanency Forum
Auburn Hills Marriot Pontiac @ Centerpoint, Pontiac
23 FCRB Advisory Committee Meeting
Hall of Justice
28 LEP Steering Committee Meeting
Hall of Justice
29 U.P. District Judges and Staff Meeting
Marquette
29 CWS Training: Self Care for Child Welfare Pros
Hall of Justice
30 Reg. 4 District Judges and Staff Meeting
Gaylord

Acronyms

CWS-Child Welfare Services
FOCA-Friend of the Court Assn.
LEP-Limited English Proficiency
MACC-Michigan Assn. of County Clerks
MACM-Michigan Assn. of Court Mediators
MADCM-Michigan Association of District Court Magistrates
MDJA-Michigan District Judges Association
MFSC-Michigan Family Support Council
MJA-Michigan Judges Association
MJI- Michigan Judicial Institute
MPJA-Michigan Probate Judges Association